

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
10/04/2001

*** FILED ***
10/24/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000241

FILED: _____

STATE OF ARIZONA
v.
JERRY L BOOTH

ROBERT KENT MCCARTHY

KERRIE M DROBAN
PHX MUNICIPAL CT
REMAND DESK CR-CCC

MINUTE ENTRY
PHOENIX CITY COURT
Cit. No. 8957028
Charge: INDECENT EXPOSURE
DOB: 09-25-1960
DOC: 02-02-2001

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since it was assigned to this Court September 7, 2001. This decision is made within 30 days of that date as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Phoenix City Court, the exhibits and the memoranda submitted by counsel.

Appellant, Jerry L. Booth, was charged by complaint with Indecent Exposure, a class 1 misdemeanor, in violation of A.R.S. Section 13-1402(A). Appellant pled not guilty and the case proceeded to a jury trial on April 6, 2001, before the Honorable Sallie Gaines, Phoenix City Court Judge. Appellant was sentenced on April 16, 2001, to three years of summary probation, 140 days in jail with credit for 74 days time served, Appellant was ordered to complete the SASS substance abuse counseling and education program, and Appellant was ordered that he could not go within two

blocks of the victim, Brittany Armstrong's address of 1425 E. Adams Street in Phoenix, Arizona. Appellant filed a timely Notice of Appeal in this case.

The only question presented for review is whether the trial court erred when it required Appellant to remain shackled and handcuffed during his trial. Throughout his trial, including jury selection, the Maricopa County Sheriff's Office jail and its detention officers required that Appellant be shackled at the feet and handcuffed. The handcuffs and shackles were visible at various times throughout jury selection and the trial.

Shackling or handcuffing a Defendant during a trial is an issue of courtroom security within the sound discretion of the trial judge.¹ The United States Supreme Court has accorded trial judge's great discretion in controlling disruptive defendants.² The United States Supreme Court explained:

We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations.³

In *State v. Stewart*⁴, the Arizona Supreme Court found that the trial court's decision to shackle the defendant during the trial was supported by the record and that the trial judge did not abuse his discretion where the defendant had prior felony convictions for crimes of violence and a conviction for escape. Stewart was wanted for escape in another state and had made statements on the record in a pretrial hearing of a threatening nature towards the judge. The judge was forced to have Stewart removed from the courtroom. In *State v. Reid*⁵, the Arizona Supreme Court applied the harmless error rule to the defendant's claim of prejudice when he was shackled during his trial and the

¹ *State v. Bracey*, 145 Ariz. 520, 703 P.2d 464 (1985); *State v. Stewart*, 139 Ariz. 50, 676 P.2d 1108 (1984); *State v. Reid*, 114 Ariz. 16, 559 P.2d 136 (1976), cert. denied, 431 U.S. 921, 97 S.Ct. 2191, 53 L.Ed.2d 234 (1977).

² *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970).

³ *Id.*, 397 U.S. at 343, 90 S.Ct. at 1061.

⁴ *Supra*.

⁵ *Supra*.

trial court record failed to disclose any reason for the shackles.

Whenever a defendant objects to being shackled or handcuffed in the presence of a jury, there must be information in the record to support the trial judge's decision to shackle or handcuff a defendant.⁶ The record in the present case does disclose reasons why Appellant was shackled and handcuffed during his trial. Apparently, the court and counsel had discussed the issue off the record previously. The prosecutor explained the reasons why Appellant was shackled on the record as follows:

MS. NOVELL: Also to make sure the record is clear, that the defendant was allowed the opportunity to change into proper attire. He is wearing a suit at this time. He is handcuffed. He does have chains on his feet but they aren't as visible as could possibly be. The indication from the police department was that -- the reason that County was not going to commit to them being taken off is that he has a prior escape conviction while in custody. He has had disruptive behavior. He's a risk to the police officers that transport him. He's also been designated based on his behavior in custody as a risk to (indiscernible) personnel.

I believe I've covered it all. But like we've indicated -- yes, had a prior escape conviction and prior -- not just -- violent offenses and violent behavior during custody, too.⁷

This Court also notes that counsel were given the opportunity of addressing the issue of handcuffs and shackles during the voir dire process. Counsel for Appellant did ask the members of the panel if the handcuffs on Appellant would affect them in any way. The trial court offered to give a final instruction to the jurors instructing them not to consider the shackles or the handcuffs. Most importantly, the record contains sound reasons why Appellant was handcuffed and shackled: Appellant has a prior escape conviction, he exhibited disruptive behavior while in custody, and he was designated while in custody as a risk to transport personnel. All of

⁶ Id.

⁷ Reporter's Transcript of April 6, 2001, at 45.

these reasons support the trial judge's refusal to allow Appellant's trial to proceed without him being handcuffed or shackled.

Finding no error,

IT IS ORDERED affirming the judgment of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.